

FEDERAL MAIL ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 MAR 15 P 12: 01

In the Matter of)

Wyoming Public Service Commission)

Petition for Waiver of Targeting Requirements)
Found in Sections 54.309 and 54.311 of the)
Commission's Rules)

CC Docket No. 96-45

FILED

ORDER

Adopted: March 8, 2001

Released: March 9, 2001

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition filed by the Wyoming Public Service Commission (Wyoming Commission) requesting a waiver of sections 54.309 and 54.311 of the Commission's rules¹ to enable the Wyoming Commission to target forward-looking high-cost support and interim hold-harmless support for non-rural carriers to the Wyoming Commission's rate zones that currently are used for establishing both retail rates and rates for unbundled network elements (UNEs).²

II. BACKGROUND

2. In the *Ninth Report and Order*, the Commission adopted sections 54.309 and 54.311 of its rules, which require the targeting of forward-looking high-cost support and interim hold-harmless support for non-rural carriers to high-cost wire centers.³ The targeting of support to high-cost wire centers is meant to minimize inefficiencies and potential market distortions caused by distributing support on a uniform statewide basis.⁴ If support was not targeted, then the same amount of support would be available for any line served by a competitor within the state. This result would create uneconomic incentives for competitive entry, because support would be available to lower-cost areas, as well as high-cost areas.⁵

¹ See 47 C.F.R. §§ 54.309, 54.311.

² Petition of the Wyoming Public Service Commission for Waiver of the Federal Communication Commission's Targeting Rules as Found in § 54.309 and § 54.311 (filed Mar. 30, 2000) (Petition).

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, at paras. 70, 82 (rel. Nov. 2, 1999) (*Ninth Report & Order*).

⁴ *Ninth Report & Order* at paras. 75, 82.

⁵ Section 254(e) of the Communications Act of 1934 states that eligible carriers may use support only for the "provision, maintenance, and upgrading of facilities and services for which the support is intended." See 47 U.S.C. § 254(e); see also *Ninth Report and Order* at paras. 75, 82.

3. Consistent with the states' primary role in ensuring reasonable comparability of rates within their borders, the Commission has recognized that some states may wish to have federal forward-looking support and interim hold-harmless support for non-rural carriers targeted to an area different than the wire center.⁶ The Commission specifically has recognized that states may wish to have federal non-rural high-cost support targeted to UNE cost zones.⁷ Sections 54.309 and 54.311 of the Commission's rules permit states to file petitions for waiver of the Commission's targeting rules, requesting to target federal forward-looking high-cost support or interim hold-harmless support to an area different than the wire center.⁸ Petitions for waiver of the Commission's targeting rules must include a description of the particular geographic level to which the state wishes federal forward-looking high-cost support or interim hold-harmless support to be targeted, and an explanation of how that approach furthers the preservation and advancement of universal service within the state.⁹

4. The Wyoming Commission seeks a waiver of the Commission's targeting requirements in order to direct non-rural forward-looking high-cost support and interim hold-harmless support for non-rural carriers to the Wyoming Commission's retail and UNE rate zones.¹⁰ The Wyoming Commission's rate zones are based on four geographic areas – Base Rate Area, Zone One, Zone Two and Zone Three. The Base Rate Area contains the highest density of access lines per square mile and Zone Three contains the lowest density of access lines per square mile.¹¹ The four rate zones currently form the basis for UNE prices and retail rates for Qwest Corporation (Qwest).¹² Qwest currently is the only non-rural carrier in Wyoming. According to the Wyoming Commission, zone boundaries are periodically reviewed and modified to reflect population changes and changing cost parameters.¹³ On May 8, 2000, the Common Carrier Bureau (Bureau) released a public notice seeking comment on the Wyoming Commission's petition.¹⁴ AT&T Corp. (AT&T), Qwest,¹⁵ and Western Wireless Corporation (Western

⁶ *Ninth Report and Order* at paras. 76, 86.

⁷ *Id.* at para. 76.

⁸ 47 C.F.R. §§ 54.309(c), 54.311(c).

⁹ *Id.* As a prerequisite to filing a waiver petition of this nature, a state must first comply with the certification requirements relating to section 254(e) of the 1996 Act. *Ninth Report and Order* at paras. 76 n. 212, 86 n. 233. States are required to certify that federal high-cost support for non-rural carriers will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. § 54.313. On March 31, 2000, the Wyoming Commission filed the required certification.

¹⁰ Petition at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See *Wyoming Public Service Commission Files for Waiver of the Non-Rural High-Cost Universal Service Support Targeting Requirements Included in Sections 54.309 and 54.311 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, DA 00-1019 (Com. Car. Bur. rel. May 8, 2000).

¹⁵ On July 16, 2000, U S WEST Communications, Inc. was renamed Qwest Corporation. See, e.g., Citizens Telecommunications Company of Iowa and U S West Communications, Inc., Joint Petition for Waiver of the (continued....)

Wireless) filed comments in support of the Wyoming Commission's petition.

III. DISCUSSION

5. We find that the targeting of support to the Wyoming Commission's retail and UNE rate zones will preserve and advance universal service within Wyoming, and, therefore, we grant the Wyoming Commission's request for waiver of section 54.309 and 54.311 of the Commission rules.

6. We find that the Wyoming Commission's request is similar to a petition filed by the Washington Utilities and Transportation Commission (Washington Commission) and twenty rural incumbent local exchange carriers (rural LEC petitioners) for waiver of our rules for distributing high-cost loop support to rural LECs.¹⁶ Although the Washington Commission's proposal involved the targeting of high-cost support to rural as opposed to non-rural carriers, both the Washington Commission and Wyoming Commission proposals involve the targeting of support to wire center density zones.

7. In approving the Washington Commission's petition, we recognized that the targeting of support to wire center density zones would closely associate support with the cost of providing service, would reduce opportunities for "cream skimming," and, therefore, would promote efficient competitive entry.¹⁷ Similarly, we find that the Wyoming Commission's proposal to target non-rural high-cost support to retail and UNE cost zones will result in support amounts more closely reflecting the underlying cost of providing services, which, in turn, will decrease opportunities for "cream skimming,"¹⁸ and discourage uneconomic market entry.¹⁹ The Wyoming Commission's method of targeting non-rural high-cost support to retail and UNE cost zones furthers the Commission's goal of targeting support to the smallest practicable geographic area.²⁰ Finally, we recognize that the targeting of support based on the Wyoming Commission's retail and UNE cost zones is consistent with the states' primary role of ensuring reasonable comparability of rates within their borders and would give the Wyoming Commission a degree of flexibility in reaching that goal.²¹ We, therefore, conclude that

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Definition of "Study Area" Contained in Part 36, Appendix—Glossary of the Commission's Rules, CC Docket No. 96-45, Notification of Change in Corporate Identity (filed July 25, 2000).

¹⁶ *Petition of Washington Utilities and Transportation Commission and Twenty Rural Telecommunications Companies for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 99-1844 (Com. Car. Bur. rel. Sept. 9, 1999) (*Washington Waiver Order*). The Washington Commission and the rural LEC petitioners requested a waiver of section 54.307 of the Commission's rules, 47 C.F.R. § 54.307, to enable the Washington Commission to disaggregate federal high-cost loop support currently distributed at the study area level by using the Benchmark Cost Proxy Model to estimate the cost of providing services in density zones within each exchange served by the rural carriers. *Washington Waiver Order* at para. 2.

¹⁷ *Id.* at paras. 8, 9, 12.

¹⁸ For example, the Wyoming Commission's proposal would prevent carriers from collecting high-cost support for the provision of services in low-cost UNE zones.

¹⁹ See AT&T Comments at 3.

²⁰ See Western Wireless Comments at 3 (citing *Ninth Report & Order* at paras. 70-76).

²¹ See *Ninth Report and Order* at para. 75.

approval of the Wyoming Commission's waiver petition will preserve and advance universal service, and is in the public interest.

8. We note that forward-looking high-cost support and interim hold-harmless support that has been transferred with acquired exchanges in accordance with section 54.305 of the Commission's rules shall not be subject to the Wyoming Commission's targeting proposal.²² Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.²³ We recently granted a request for waiver of the definition of "study area" contained in Part 36 Appendix-Glossary of the Commission's rules, which will enable Qwest to remove five exchanges from its Wyoming study area, and permit Citizens Telecommunications Company of Wyoming (Citizens) to create a new Wyoming study area for the acquired exchanges.²⁴ If the five Wyoming exchanges are transferred from Qwest to Citizens prior to the implementation of the Wyoming Commission's targeting proposal, the forward-looking high-cost support that is transferred with the acquired exchanges is subject to the restrictions contained in section 54.305 of the Commission's rules and is not subject to the Wyoming Commission's new targeting mechanism.²⁵

9. We condition grant of the Wyoming Commission's request for waiver of sections 54.309 and 54.311 of the Commission's rules on the Wyoming Commission submitting to the Universal Service Administrative Company (USAC) information necessary for USAC to administer the proposal, including information necessary to determine disaggregated support amounts in the Wyoming Commission's retail and UNE cost zones. For example, in order for USAC to calculate and distribute support under the Wyoming Commission's targeting proposal, the Wyoming Commission must submit: (1) loop counts for each wire center cost zone; and (2) maps showing the location of wire center cost zones. Without such information, USAC will be unable to calculate and distribute support to the Wyoming Commission's cost zones. We recognize that the Wyoming Commission will have to work closely with USAC to determine what information is necessary to implement the proposal. We direct USAC to obtain such information from the Wyoming Commission and other parties as USAC deems necessary for the implementation of the Wyoming Commission's proposal. For ease of administration, we conclude that USAC should implement the proposed methodology on July 1, 2001, or the start date of the quarter after USAC receives all necessary information from the Wyoming Commission, whichever is later.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, sections 54.309 and 54.311 of the Commission's rules, 47 C.F.R. §§ 54.309, 54.311, and authority delegated by sections 0.291 and 1.3 of the Commission rules, 47 C.F.R. §§ 0.291, 1.3, that the petition filed by the Wyoming Public Service Commission on March 30, 2000, is GRANTED to the extent described herein.

²² 47 C.F.R. § 54.305.

²³ *Id.*

²⁴ See *Citizens Telecommunications Company of Wyoming and Qwest Corporation, Joint Petition for Waivers of the Definition of "Study Area" Contained in Part 36, Appendix – Glossary of the Commission's Rules*, CC Docket No. 96-45, Order, DA 01-410 (Acc. Pol. Div. rel. February 16, 2001).

²⁵ See *id.* at para. 9.

11 IT IS FURTHER ORDERED that this order is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Carol E. Matthey". The signature is fluid and cursive, with the first name "Carol" being more legible than the last name "Matthey".

Carol E. Matthey
Deputy Chief, Common Carrier Bureau